

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

EARL PRATHER, et al.,              )  
  )  
Plaintiffs,                         )  
                                       )  
                                       )  
v.                                     ) Case No. 4:04CV1429 RWS  
                                       )  
PFIZER, INC., et al.,             )  
                                       )  
                                       )  
Defendants.                        )

**MEMORANDUM AND ORDER**

This case is before me on plaintiffs' motion to dismiss this action without prejudice. Defendants oppose dismissal, or in the alternative, move for dismissal upon imposition of costs, fees and other conditions. After careful consideration, I will grant plaintiffs' motion for dismissal upon payment of court costs.

Plaintiffs contend that their motion for voluntary dismissal should be granted in part because I vacated the default obtained against defendant in state court "based on a null and void Order of a State Court which was gained by an ex-parte effort by Defendants." Plaintiffs also argue that removal was untimely but that I decided it was unfair to penalize defendant for their failure to timely perfect removal.

I did not vacate the default judgment "based on a null and void Order of a State Court." **I vacated an interlocutory default obtained by plaintiff in a case that was timely removed to this Court.** That plaintiff's counsel still fails to

comprehend basic rules of procedure does not mean that their application in this case was improper or unfair. If anyone in this case can be faulted for tactical maneuvering it is the plaintiffs, not defendant. Plaintiffs' argument that dismissal should be granted for this reason must be rejected.

Despite the fact that this case was timely removed and that the interlocutory default against defendant was properly set aside, I am going to exercise my discretion and allow plaintiffs, in the interests of justice and after consideration of the relevant factors, to dismiss this action without prejudice upon payment of court costs. Plaintiffs previously dismissed Missouri defendants from this case based on counsel's belief -- albeit an unjustifiably erroneous one -- that the default order obtained in state court concluded this matter. Given the posture of this case, I do not believe that defendant will be unfairly prejudiced by the dismissal, nor do I find the imposition of fees or other conditions necessary to protect the interests of defendant.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion for voluntary dismissal without prejudice [#36] is granted **upon payment of court costs.**



RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE

Dated this 23rd day of May, 2005.